

Invention II -- Claims 5-6 and 16-41, drawn to a method for deterring pets from scratching objects or digging in soil, classified in class 156, subclass 230.

Applicant makes a provisional election with traverse to prosecute Invention I, Claims 1-4, 7-15 and 42-45. However, Applicant respectfully requests reconsideration of the restriction requirement on the following basis:

Examiner argues that the inventions are distinct because the inventions, as shown above, are related as product and process of use and yet are distinct. A product and a process of using the product can be shown to be distinct inventions if either of the following can be shown: (A) the process of using as claimed can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process. *See* MPEP § 806.05(h). To support a requirement for restriction, Examiner states the criteria under § 806.05(h) has been met because the product as claimed can be used in a materially different process of using that product such as in the attachment of a display surface (poster, picture) onto a substrate such as a wall.

Applicant respectfully submits that the product as claimed cannot be used in the process suggested by the Examiner. For example, Claim 1, line 11 requires the product to be “adhered to said home furnishing.” This claim language cannot be met in the process suggested by the Examiner because a “wall” is not a “home furnishing” as required by the claim. Applicant further submits that the process as claimed cannot be used with a different product. For example, claim 5 requires the step of “peeling said transparent strip from said transfer sheet and releasably adhering said strips to said home

furnishings on said first adhesive surface." This step cannot be practiced with a product except that as claimed.

The MPEP provides that if an applicant provides "a convincing argument that the alternative use suggested by the examiner cannot be accomplished, the burden is on the examiner to support a viable alternative use or withdraw the requirement." *See*, MPEP § 806.05(h). Therefore, Applicant respectfully requests that the restriction requirement be withdrawn.

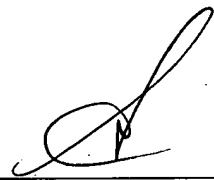
Assuming that the Examiner has been persuaded to withdraw the restriction as to Invention I and Invention II, Applicant respectfully makes a provisional election to prosecute Group II, Species A, Claims 5 and 6.

### **Conclusion**

Applicant respectfully requests a reconsideration of the application and earnestly solicits allowance. Should it facilitate allowance of the application, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,

Dated: DEC 21 2004

By:   
George R. Schultz  
Reg. No. 35,674  
SCHULTZ & ASSOCIATES, P.C.  
ONE Lincoln Centre  
5400 LBJ Freeway, Suite 525  
Dallas, Texas 75240  
(214) 210-5940 telephone  
(214) 210-5941 facsimile